

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSE HENRY GONZALEZ, Individually and on Behalf of All Other Persons Similarly Situated,	:	<u>ECF CASE</u>
	:	
Plaintiff,	:	No.: 1:12-CV-3465 (BMC)
	:	
v.	:	
	:	
AUTO-CHLOR SYSTEM OF NEW YORK CITY, INC., and ABC CORPORATIONS # 1-10, and JOHN DOES #1-10, Jointly and Severally,	:	
	:	
Defendants.	:	
	:	

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DECLARATION OF HENRY GONZALEZ IN SUPPORT OF PLAINTIFF'S MOTION FOR
CONDITIONAL CLASS CERTIFICATION AND COURT-AUTHORIZED NOTICE

Dated: New York, New York
November 16, 2012

SUBMITTED BY:

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Putative Class Members*

DECLARATION OF HENRY GONZALEZ

I, Henry Gonzalez, upon personal knowledge and under penalty of perjury, pursuant to 29 U.S.C. § 1746, state and declare that the following are true and correct:

1. I worked for Defendant Auto-Chlor System of New York City, Inc. ("Auto-Chlor") as a Technician from June 15, 2007 January 2011 in its Queens branch.

2. Auto-Chlor provides dishwashing machine installation and repair services for customers throughout New York, New York, Queens, New York, Brooklyn, New York, Bronx, New York and Long Island, New York.

3. My primary duties while working as a Technician for Auto-Chlor involved installing and repairing dishwashing machines.

4. From personally speaking with them, I know that other Technicians who worked for Auto-Chlor performed similar duties as me. Some of these individuals include Richard Keating, Paul Argento, John Carlisimo, Cesear Gonzlaez, and John Colilo. During these discussions, we would discuss various jobs that we completed as technicians. While working at the Queens branch, many technicians were hired and fired. In total, I am aware of about 20 people who worked in Queens as a technician, and 10 at the Plainview, Long Island Branch who performed the same main duties like me.

5. While working at Auto-Chlor as a Technician, I was paid an initial hourly rate of \$17.00, which was increased to \$17.50.

6. From personally speaking with them, I know that other Auto-Chlor technicians were paid an hourly rate, just like me. Some of these individuals include Richard Keating, Paul Argento, John Carlisimo, Cesear Gonzlaez, and John Colilo. I have spoken with technicians at the other branches, including Plain View and New Jersey, and confirmed that they worked the same hours as me and got paid the same way as me.

7. During my regular work schedule while working as a Technician, I worked nine-hour shifts, five days per week (Monday – Friday), which equals forty-five (45) hours per week. For some weeks, my shift was from 8:00 a.m. to 5:00 p.m. I almost never took a lunch break.

8. In addition to my regular schedule, I also had to be on-call 24 hours per day, once a week, every 4 weeks. Meaning, when I was not regularly scheduled to work, Auto-Chlor's automated phone system would forward to me a voicemail that an Auto-Chlor customer would leave, in which they would describe the necessary repair or installation job. I would then call the customers to advise them when I would arrive to perform the installation or repair work, and then drive to the customers from wherever I was when I received the voicemail.

9. While on-call, I would sometimes receive only one on-call job, after which I would drive home. While at an on-call job, I would sometimes receive a voicemail advising me of another on-call job, and I would then drive from one on-call job to the next.

10. To track the hours I worked while on-call, I used the "on-call book." I would pick up the on-call book at the end of my regular shift, about 5:00 p.m., and turn it in to my manager before my regular shift began the next day, about 8:00 a.m.

11. In the on-call book, I would write down the time when I first received an on-call job, but before I drove to the job. In this book, if I did not have another on-call job to go to, I would write down the time when I arrived back home, or wherever I was when I got the voicemail. In this book, if I had another on-call job to go to, I would write down when I finished the first job as my "clock out" time for that job, and would write down when I began driving to the next job as my "clock in" time for the next job. And I would continue to follow this procedure until I completed all of my on-call jobs. Once done with my on-call jobs, I would clock-out once I returned home.

12. I believe that Auto-Chlor monitors some of my on-call time by tracking when I

receive these voicemails and when the customer signs off on the invoice.

13. Upon submitting my on-call book to my manager, my manager regularly reduced my total number of on-call hours based on the amount of time he thought each job should have taken.

14. I know that Auto-Chlor did not pay me for all of my on-call hours worked because I would calculate how many on-call hours I worked at the end of the week, and I would compare that number with the total number of on-call hours for which I was paid.

15. I complained on multiple occasions to my manager about not being paid for all of my on-call hours worked.

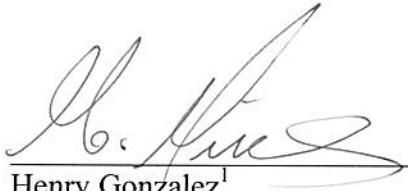
16. I was regularly not paid for five or more hours of on-call time per week.

17. As I regularly worked more than forty (40) hours per workweek, I should have received overtime premium pay for the two or more hours that I worked for which I was not compensated.

18. From speaking with technicians at my branch, in New Jersey, and in the Plainview, New York branch, I know that other Auto-Chlor Technicians worked about the same number of hours per week as me and were similarly not compensated for all of the hours that they worked and reported, as they were also not paid for all of their on-call work. Some of these individuals include Richard Keating, Paul Argento, John Carlisimo, Cesear Gonzlaez, and John Colilo. During these discussions, we talked about how many hours we worked and recorded in our books, versus how many hours we were paid, with them saying how Auto-Chlor “shorted” them on their hours.

19. Auto-Chlor did not pay me and, upon information and belief, other Technicians time and one half (1 ½) our regular rate for every hour that we worked in excess of forty (40) hours per workweek.

Dated: November 11, 2012


Henry Gonzalez¹ 11

¹ I recently legally changed my name from Jose Henry Gonzalez to Henry Gonzalez.